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# Republican Policy Committee

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## Whitewater Hearings Resume

### **Grand Jury Takes President's Accuser as Credible Witness**

Last year, Arkansas Democratic Party activist and former judge David L. Hale accused President Bill Clinton and Governor Jim Guy Tucker of having pressured him into making illegal loans from Capital-Management Services, Inc., the investment company he once operated in Little Rock. Both the President and the Governor angrily denied the accusations, with Clinton denouncing Hale's allegations as "bull." ["An Indicted Governor," *U.S. News & World Report*, 6/19/95.]

On June 7, 1995, a federal grand jury in Little Rock, after hearing extensive testimony from Hale and other witnesses, indicted Governor Tucker and his business partner, William J. Marks, on three felony counts. The charges, all recommended by Independent Counsel Kenneth W. Starr, are: conspiracy to make false statements to Capital-Management Services, a federally-licensed small business investment company; making a false statement to Capital-Management Services; and conspiracy to defraud the Internal Revenue Service. [*United States v. Jim Guy Tucker et al*, U.S. District Court for the Eastern District of Arkansas.]

The indictment of Governor Tucker, who served as Lieutenant Governor under Bill Clinton and succeeded him when Clinton won the presidency, is the most dramatic development to date in the investigation of the Whitewater-Madison affair. While any indictment against a sitting governor is an extraordinary event, what may be most significant here is that Tucker's accuser, David Hale, has also accused President Clinton of the same wrongdoing.

### ***Hale's Federally-backed Investment Company, Capital-Management Services***

Hale, who founded Capital-Management Services in 1979 and ran the company until it closed in 1993, has longstanding ties to both President Clinton and Governor Tucker. Clinton, in his first term as Arkansas Governor, appointed Hale to a part-time municipal judgeship in Little Rock. Hale was co-chairman of Tucker's unsuccessful U.S. Senate campaign in 1978, and during the 1980s he sent Capital-Management Services' legal business to Tucker's law firm.

In 1979, its first year of operation, Capital-Management Services obtained a license from the U.S. Small Business Administration to operate as a "specialized small business investment company" (SSBIC). As a licensed SSBIC, Capital-Management Services was part of a federal program intended to assist small businesses owned by persons "whose participation in the free

*enterprise system is hampered because of social or economic disadvantages."* SSBICs are authorized to invest *solely* in disadvantaged small business concerns, and loans from SSBICs are guaranteed by the Small Business Administration. [15 USC §§ 681(d), 683.]

In 1980, the Small Business Administration issued "SBA Policy and Procedural Release #2017" to guide eligibility determinations for SSBIC financing. A disadvantaged small business was defined as one owned by individuals whose "social and economic background . . . have prevented them from obtaining financial or other assistance available to the average entrepreneur in the economic mainstream." Several factors were to be considered, including low income, limited education, physical or other handicap, and Vietnam-era service in the armed forces.

### ***Taxpayers Lost \$3.4 Million in Capital-Management Loans***

Capital-Management Services abused its SSBIC license, as loan money seemed to flow freely to the Arkansas business and political elite. The "disadvantaged" businesses that received shares of the federally-financed largess included **Cablevision Management, Inc.**, a cable television firm owned by now-Governor Tucker; **Kings River Land Company**, a real estate development in which Tucker, James McDougal (the Clintons' Whitewater partner), and Stephen A. Smith (an aide to Clinton during his time as Governor) had financial interests; and **Whitewater Development Corporation**, the real estate development begun in 1978 by Governor-to-be Bill Clinton and Hillary Rodham Clinton, along with James and Susan McDougal.

Many loans were not repaid. According to a report by the General Accounting Office, the Small Business Administration (meaning the federal taxpayers) lost a total of \$3.4 million on Capital-Management Services loans. [GAO, *Small Business Administration: Inadequate Oversight of Capital-Management Services, Inc. — an SSBIC* (GAO-OSI-94-23, 3/21/94)]. It is not clear how much of that amount had assisted disadvantaged small businesses, but members of the Arkansas Democratic "political family" (the words are James McDougal's) did very well. ["Ex-Judge: Arkansas Loans Mocked Law," *Washington Post*, 2/15/94.]

### ***Hale Becomes Key Grand Jury Witness***

In March 1994, Hale pleaded guilty to one charge of fraud unrelated to Clinton, Tucker, or Whitewater Development Corporation. As part of his plea bargain, Hale agreed to cooperate with the Independent Counsel by providing information on the "banking and borrowing practices" of Arkansas' most powerful political figures, "past and present." He has been a frequent witness before the federal grand jury investigating Whitewater-Madison, and is described as a "central witness" in the indictment of Governor Tucker. A lawyer close to the investigation says: "The Tucker case was a big step for prosecutors because it shows Hale is clearly someone they can use as a starting point in assembling major criminal cases." ["An Indicted Governor," *U.S. News & World Report*, 6/19/95; "Judge's Story Fuels Probe of Whitewater," *Chicago Tribune*, 6/9/95.]

## ***Hale's Accusations Against Governor Tucker***

The grand jury indictment, requested by Independent Counsel Starr following Hale's testimony, charges that in June 1987 Tucker asked Hale for a loan in the amount of \$300,000. Tucker, with his business partner and co-defendant Marks, set up "D&L Telecommunications, Inc." to receive the loan, and represented that this new company would use the money to do underground cable construction in Arkansas.

Tucker's wife, Betty, was represented to be a 50-percent shareholder in D&L Telecommunications and the secretary of the corporation. Presumably, her role was to serve as the "socially disadvantaged" business owner. At the time, the Tuckers had a net worth of \$1.3 million. ["Clinton Successor in Arkansas Tied to SBA Funding," *Washington Times*, 5/10/94.]

The grand jury charges that D&L Telecommunications never did business, intended to do business, or applied to do business in Arkansas. Betty Tucker (who was not indicted) did not own stock or hold corporate office. The \$300,000 loan from Capital-Management Services was issued in the name of D&L Telecommunications, as requested by Jim Guy Tucker, but that company did not receive the proceeds. Instead, Tucker and Marks allegedly used the money as collateral for an \$8.5 million personal loan from an out-of-state bank, which financed the acquisition of a cable television system in Florida by another Tucker company, Cablevision Management, Inc. [*United States v. Jim Guy Tucker et al.*, U.S. District Court for the Eastern District of Arkansas, Indictment filed 6/7/95, Count One ¶¶ 13-29, Count Two ¶ 2.]

Cablevision Management later sold the Florida cable system for a profit of \$13 million. The third count of the indictment — the only one not directly related to Capital-Management Services — accuses Tucker, Marks, and their lawyer, John H. Haley, of conspiring to defraud the Internal Revenue Service by understating the gain on the sale.

## ***Hale's Accusations Against Former Clinton Aide Lead to Guilty Plea***

Still another Arkansas political figure accused by Hale of obtaining illegal loans from Capital-Management Services is Stephen A. Smith. On June 8, the day after the Tucker indictment, Smith pleaded guilty to a charge of misapplying the proceeds of a Capital-Management Services loan, and agreed to cooperate in Independent Counsel Starr's investigation.

Smith, too, has longstanding ties to the Clintons and to Governor Tucker. When President Clinton served as Attorney General of Arkansas in the 1970s, Smith was his chief of staff. He was also a top aide during Clinton's first term as Governor. As president of the Bank of Kingston, owned by the Clintons' Whitewater partner James McDougal, Smith approved a \$30,000 loan to Hillary Rodham Clinton to build a model home on Lot 13 of the Whitewater Development Corporation property. (This loan was made in 1980, which obviously calls into question the Clintons' claim that they were passive investors in Whitewater at the time.) Later, Smith was a business partner of both Tucker and McDougal in the real estate development known as Kings River Land Company.

Confirming accusations by Hale, Smith admitted in his plea agreement that he made a false loan proposal to Capital-Management Services in 1986. Without any pretext of being "disadvantaged" — he held a Ph.D. degree and was a University of Arkansas professor — Smith asked Hale for a \$65,000 loan, purportedly to expand his consulting business. The money was actually used to pay off a debt of Kings River Land Company that Smith, Tucker, and McDougal each had personally guaranteed. [*United States v. Stephen A. Smith*, U.S. District Court for the Eastern District of Arkansas, Plea Agreement filed 6/8/95, ¶ 5.]

With the cash obtained from Capital-Management Services, these three "disadvantaged" members of the Arkansas political elite protected their personal assets from potential action by their land company's creditor. The federal taxpayers covered the loss, as Smith did not repay the loan and later filed for bankruptcy.

### ***Hale's Accusations Against President Clinton***

Hale claims that in late 1985, Governor Clinton and James McDougal began pressuring him for a loan from Capital-Management Services, saying they needed money to "clean up" some personal financial problems. According to Hale, the three men — Clinton, McDougal and Hale himself — met at the State Capitol in Little Rock in February 1986. On that occasion, Clinton asked Hale to "help Jim and me out." ["High Stakes Put on Whitewater Figure's Story," *Boston Globe*, 3/22/94.]

Hale says he met with Clinton and McDougal again during March 1986, at McDougal's office at Castle Grande (a real estate development outside Little Rock, which was, incidentally, part-owned by Tucker and financed with a Capital-Management Services loan). At that meeting, they discussed the details, settled on the amount of \$300,000, and decided to issue the loan in Susan McDougal's name, calculating that a woman could be cast as "socially disadvantaged." The McDougals had a net worth of \$2.2 million at the time. ["Hale Threatens to Topple Clintons," *Human Events*, 4/1/94; "Hale to Detail Clinton's Role in Whitewater," *Washington Times*, 3/21/94].

An undated, unsigned document, "Confidential Data, Master Marketing," provided by Hale's attorney to the General Accounting Office in the course of its investigation of Capital-Management Services, requests the loan of \$300,000 to Susan McDougal's company, Master Marketing. The document states: "This report is prepared for and provided to Capital Management Corporation [sic] for its exclusive internal use in evaluating a loan application by Master Marketing." Master Marketing was described as a general purpose real estate brokerage firm wholly owned by Susan McDougal. The document represented that the loan proceeds would be used to improve and market a real estate development called "Flowerwood Farms," and another unnamed project south of Little Rock. [A photocopy of "Confidential Data, Master Marketing," from *Whitewater Related Documents*, published by Citizens United, Fairfax, VA, is on file with RPC.]

Though President Clinton has dismissed Hale's account as "bull," there is no dispute that Capital-Management Services issued a loan in the amount of \$300,000 to "Susan H. McDougal,

d/b/a Master Marketing" on April 3, 1986. Susan McDougal initially deposited the funds into the account Master Marketing had established at Madison Guaranty Savings and Loan, owned by James McDougal. Then, \$110,000 was moved to the Whitewater Development Corporation checking account, also at Madison. ["Ex-Judge Points Finger at Governor," *Washington Times*, 9/12/94; "High Stakes Put on Whitewater Figure's Story," *Boston Globe*, 3/22/94.]

The loan to Susan McDougal was never repaid, and the U.S. taxpayers were stuck with the loss.

Hale acknowledges: "I knew what was going on, as we all did. But we were friends, and that's just the way business is done in Arkansas." ["Ex-Clinton Aide Takes Whitewater Plea Deal," *Washington Times*, 6/9/95.]

### ***The White House Response***

Immediately after Governor Tucker's indictment, a White House spokesman said: "We are not aware of anything in this indictment that relates to the President or the White House. The President feels that Jim Guy Tucker is an outstanding public servant." ["Arkansas Governor Indicted in Probe of Whitewater," *Washington Post*, 6/8/95.] Concerning Smith's guilty plea, the Clintons' attorney David Kendall responded: "This . . . does not involve the Clintons...nor does it relate to Whitewater Development Co. The charge arises out of Mr. Smith's private business affairs." ["Early Clinton Aide Pleads Guilty to Loan Conspiracy in Arkansas," *Washington Post*, 6/9/95.]

Tucker, arraigned with his co-defendants on June 22, pleaded not guilty and lashed out at Independent Counsel Starr, asserting that Starr "is filled with deliberate partisan zeal" ["For Arkansas Democrats, The Times Turn Painful," *New York Times*, 6/23/95] — although the grand jury that issued the indictment is made up of Arkansas voters.

### ***Hale—Capital-Management—Whitewater: Where Do the Allegations Lead?***

Of the many allegations related to Whitewater-Madison, Hale's accusations against President Clinton may well be the most serious. Hale claims to have personal knowledge of then-Governor Clinton's participation in — or instigation of — a fraudulent scheme to obtain a federally-guaranteed loan.

If Hale's account is true, the \$300,000 Capital-Management Services loan to Susan McDougal's company — part of which went to Whitewater — may have been illegal under several federal felony statutes, including two for which Governor Tucker has been indicted —

- 18 USC § 371, which makes it a crime to conspire to defraud any agency of the federal government. [*United States v. Jim Guy Tucker et al.*, Indictment filed 6/7/95, Count One.]

- 18 USC § 1014, which prohibits making false statements for the purpose of influencing a federally-licensed small business investment company. [*United States v. Jim Guy Tucker et al.*, Indictment filed 6/7/95, Count Two.]

See *Whitewater-Madison: Twelve Questions*, U.S. Senate Republican Policy Committee Issue Update, May 23, 1994, pp. 9-10, for a description of other federal laws that could apply.

The loan deal that led to criminal charges against Governor Tucker is very similar to the deal Hale says involved President Clinton. Hale charges that Clinton asked him for a \$300,000 loan from Capital-Management Services, a federally-licensed small business investment company authorized to lend only to the disadvantaged. In issuing the loan, Susan McDougal, a millionaire, was named as the "socially disadvantaged" business owner. The check was issued to Master Marketing, but part of the funds were diverted to Clinton's business interests, *i.e.*, Whitewater Development Corporation. The loan was never repaid, and the federal taxpayers had to "pick up the tab."

The grand jury, after weighing Hale's testimony, charges that Tucker asked Hale for a \$300,000 loan from Capital-Management Services, a federally-licensed small business investment company authorized to lend only to the disadvantaged. In issuing the loan, Betty Tucker, a millionaire, was named as the "socially disadvantaged" business owner. The check was issued to D&L Telecommunications, but the funds were diverted to Tucker's business interests. Tucker repaid this loan, but the fact remains that it was illegally obtained.

Hale's accusations against Tucker remain to be proven at a trial, and defenders of both Clinton and Tucker have used Hale's guilty plea to the unrelated charge to attack his credibility. However, Hale's grand jury testimony so far has led to the indictment of a sitting governor, and a guilty plea by a lesser player. What we know for now is that the Independent Counsel and the Arkansas citizens serving on the grand jury are viewing Hale's accusations as credible.

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